

# **ALABAMA BOARD OF NURSING**

## **Chapter 610-X-8**

### **Disciplinary Action**

#### **Table of Contents**

**610-X-8-.01 Definitions**

**610-X-8-.02 Grounds for Denial of a License**

**610-X-8-.03 Grounds for Discipline of a License or Denial of Renewal or Reinstatement**

**610-X-8-.04 Investigation**

**610-X-8-.05 Board Action Following Investigation**

**610-X-8-.06 Administrative Procedure Act**

**610-X-8-.07 Formal Disposition of Contested Cases**

**610-X-8-.08 Informal Disposition of Contested Cases**

**610-X-8-.09 Decisions of the Board**

**610-X-8-.10 Application Following Denial of Licensure**

**610-X-8-.11 Reinstatement of a Revoked License**

**610-X-8-.01 Definitions.**

(1) Letter of Closure: A letter from the Board that notifies the registered nurse, licensed practical nurse or applicant for licensure that the case has been closed without discipline.

(2) Letter of Admonishment: A letter from the Board that addresses the areas of concern over the reported conduct and notifies the registered nurse, licensed practical nurse or applicant for licensure that the case has been closed without discipline.

(3) Reprimand: A formal censure by the Board.

(4) Fine: A monetary penalty imposed by the Board.

(5) Probation: The monitored practice of nursing which permits the nurse to continue to practice nursing pursuant to specified conditions as set forth by the Board.

(6) Suspension: The temporary withdrawal of the license by Board action.

(7) Revocation: The withdrawal of the license by Board action.

(8) Voluntary Surrender: The voluntary relinquishment of a license that has the force and effect of revocation.

(9) Abandonment: Acceptance of a patient assignment, thus establishing a nurse-patient relationship, and then ending the nurse-patient relationship without giving reasonable notice to supervisory personnel so that others can make arrangements for continuation of nursing care.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, § 34-21-2(l), 34-21-25.

**History:** Effective September 29, 1982. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002. **Amended:** Filed July 22, 2005. Effective August 26, 2005.

#### **610-X-8-.02 Grounds for Denial of a License.**

The following may be grounds for denial of a license and/or temporary permit by examination or endorsement:

(1) Failure to meet any requirement or standard established by law or by rules and regulations adopted by the Board.

(2) Engaging in fraud, misrepresentation, deception, or concealment of a material fact in applying for or securing licensure or taking any examination required for licensure.

(3) A course of conduct that would be grounds for discipline under Rule 610-X-8-.03.

(4) Having disciplinary action pending or having a license denied, conditionally issued, reprimanded, placed on probation, suspended, revoked, or voluntarily surrendered in another state, territory or country.

(5) Having been court-martialed or administratively discharged by a branch of the United States Armed Forces for any act or conduct that would constitute grounds for discipline in this state under Rule 610-X-8-.03.

(6) Failure to produce evidence of good moral character.

(a) The decision as to whether the applicant is of good moral character is within the discretion of the Board of Nursing.

(b) Failure to show good moral character includes but is not limited to a criminal history or pattern of illegal conduct or disregard for the law.

(7) Any other reasons authorized by law.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, §§ 34-21-21, 34-21-25.

**History:** Effective September 29, 1982. Amended April 27, 1984. **Repealed**

**and Replaced:** Filed January 29, 2002. Effective March 5, 2002.

### **610-X-8-.03 Grounds for Discipline of a License or Denial of Renewal or Reinstatement.**

The Board may reprimand, fine, probate, suspend, revoke or otherwise discipline any registered nurse or licensed practical nurse upon proof that the person:

(1) Is guilty of fraud or deceit in procuring or attempting to procure a license by:

(a) Filing false, forged or altered documents or credentials, including required continuing education documentation.

(b) Misrepresenting or falsifying facts in applying for original licensure, renewal, reactivation, or reinstatement of license.

(c) Having another person appear for a licensing or certification examination.

(2) Has been convicted of a felony offense.

(3) Has been convicted of, or has entered a plea of guilt, regardless of court disposition, to a charged criminal act involving moral turpitude or of gross immorality that would tend to bring reproach upon the nursing profession. Such criminal acts include, but are not limited to, offenses involving:

(a) Drugs.

(b) Theft.

(c) Lewdness.

(d) Sexual misconduct.

(e) Abuse.

(f) Violence.

- (g) Fraud.
- (h) Any other conduct detrimental to the public's health, safety or welfare.

(4) Is unfit or incompetent due to the use of alcohol, or is addicted to the use of habit-forming drugs to such an extent as to render the registered nurse or licensed practical nurse unsafe or unreliable that includes but is not limited to:

- (a) Testing positive for alcohol and/or unauthorized mood-altering drugs.
- (b) Misappropriation or diversion of drugs from the workplace.
- (c) Obtaining an unauthorized prescription by fraudulent means for self use.
- (d) A pattern of abuse or misuse of habit forming and/or mood-altering drugs or alcohol.
- (e) Impairment while on duty due to alcohol or the use of unauthorized or duly authorized prescription drugs.
- (f) Refusal to submit to drug screen for cause.
- (g) Submission of a diluted, adulterated, or substituted specimen for drug testing.
- (h) The use of alcohol or habit forming or mood altering drugs to the extent that medical or psychiatric treatment, rehabilitation, or counseling is medically determined or otherwise recommended by a legally authorized practitioner.

(5) Has been convicted of any violation of a federal or state law relating to controlled substances, including misdemeanor and felony offenses.

(6) Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health, that includes but is not limited to:

(a) Failure to comply with the Alabama Nurse Practice Act and rules and regulations as well as all federal, state or local laws, rules or regulations applicable to the area of nursing practice.

(b) Failure to practice nursing in accordance with the standards of practice adopted by the Board.

(c) Practice beyond the scope of practice as determined by, but not limited to:

- (i) Educational preparation.
- (ii) License status.
- (iii) Advanced practice approval.
- (iv) Collaborative practice agreements.
- (v) State and federal statutes and regulations.

- (vi) State and national standards appropriate to the type of practice.
  - (vii) Nursing experience.
  - (viii) Standardized procedures.
  - (ix) Knowledge, skills and ability to manage risks and potential complications.
  - (x) Required instruction and supervision.
- 
- (d) Failure to assess and evaluate a patient's status.
  - (e) Failure to institute nursing interventions that might be required to stabilize a patient's condition or to prevent complications.
  - (f) Failure to:
    - (i) Use appropriate nursing judgment.
    - (ii) Administer medications and treatments in a responsible manner.
    - (iii) Demonstrate competence in administering or carrying out patient care.
  - (g) Failure to make entries, destroying or altering entries, charting before assessment or delivery of care, or making false entries in patient, employer, or employee records.
  - (h) Failure to timely, accurately, legibly, and completely report and document on appropriate records a patient's status, including signs and symptoms, responses, treatments, medications, other nursing care rendered, communication of pertinent information to other health team members, and unusual occurrences involving the patient.
  - (i) Directing, assigning, or providing patient care in a manner that fails to take into consideration patient safety.
  - (j) Assigning nursing functions to others who lack the educational preparation, license, credentials, competence, experience, knowledge, or physical, mental or emotional ability to perform the assigned functions.
  - (k) Failure to provide adequate supervision, management, or training of individuals to whom nursing functions or responsibilities are delegated or assigned.
  - (l) Gross negligence in the practice of nursing.
  - (m) Abandoning or neglecting patients. A certified copy of the record of a state or federal agency that substantiated neglect of a patient shall be conclusive evidence of patient neglect.
  - (n) Failure to safeguard the patient's dignity, right to privacy, and confidential health information unless disclosure is required by law.
  - (o) Intentionally or negligently causing or permitting physical, sexual, emotional, or verbal abuse of a patient, willfully harassing or intimidating a patient. A certified copy of the record of a state or federal agency that substantiated patient abuse shall be conclusive evidence of abuse, harassment, or intimidation of a patient.
  - (p) Violating professional boundaries of the nurse-patient relationship that includes but is not limited to:
    - (i) Sexual or inappropriate intimate conduct with a patient, patient's immediate family member(s) or significant other(s).
    - (ii) Emotional or financial exploitation of the patient or the patient's

immediate family member(s) or significant other(s).

(iii) Inappropriate personal disclosure to a patient, or the patient's immediate family member(s) or significant other(s).

(q) Exhibiting inappropriate or unprofessional conduct or behavior in the workplace.

(r) Engaging in fraud, deceit or misrepresentation in seeking employment, practicing, or seeking to practice that includes but is not limited to:

(i) Alteration of a temporary permit, identification card or license.

(ii) Falsification of credentials.

(iii) Falsification of employment records.

(iv) Presenting oneself as a registered nurse, licensed practical nurse, or advanced practice nurse without Board approval.

(v) Falsification of continuing education documents.

(s) Commission of fraudulent acts in advertising, insurance, or in billing for services, that includes, but is not limited to:

(i) Medicare or other federal government programs.

(ii) Medicaid or other state government programs.

(iii) Commercial insurance or health plan.

(t) Aiding, abetting, or assisting an individual to violate or circumvent any law or rule intended to guide the conduct of a nurse or any other licensed health care provider.

(u) Failure to ensure verification of current Alabama licensure and credentials of nursing personnel for whom the nurse is administratively responsible.

(v) Personal use of unauthorized or illegal drugs or substances or obtaining, furnishing or administering drugs or controlled substances to any person, except as directed by a legally authorized prescriber.

(w) Appropriating anything of value, use or benefit, including but not limited to:

(i) Any real or personal property of the patient, employer, or any other person or entity.

(ii) Failing to take precautions to prevent such misappropriation.

(x) Practicing while the mental or physical ability to practice is impaired by any mood-altering drugs or substances or by a physical, mental, or emotional disorder that renders the registered nurse or licensed practical nurse unable to perform with reasonable skill and safety.

(y) Failure to report illegal, substandard, unethical, unsafe or incompetent

nursing practices.

(z) Having a license denied, conditionally issued, reprimanded, placed on probation, suspended, revoked, or voluntarily surrendered in another state, territory or country, or having been court-martialed or administratively discharged by a branch of the United States Armed Forces for any act or conduct which would constitute grounds for disciplinary action in this state. A certified copy of the record of the agency that took such action shall be conclusive evidence of the grounds for discipline.

(7) Failure to respond to official Board correspondence, including but not limited to:

- (a) Requests for information.
- (b) Subpoenas.
- (c) Notices.

(8) Has willfully or repeatedly violated any of the provisions of a statute or rule that includes but is not limited to:

(a) Practicing or seeking to practice professional or practical nursing without a current license or temporary permit.

(b) Impersonating an applicant for licensure or another licensed practitioner or permitting or allowing another person to use the nursing license or temporary permit.

(c) Continued violation of statute or rule after notice by the Board.

(d) Failure to comply with any stipulated terms and conditions of any Board order or contract.

(9) Failure of a registered nurse or licensed practical nurse who provides continuing education to comply with continuing education rules.

(10) Failure to repay scholarship funds awarded by the Board for post-baccalaureate study.

(11) Submitted payment of any fees or fines to the Board with a worthless check, invalid credit card, or by any other method that is not honored by the financial institution.

(12) Poses a risk to public safety for any other reasons authorized by law.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, § 34-21-2(l), 34-21-25.

**History:** Effective September 29, 1982. Amended March 22, 1991. Amended March 24, 1985. Amended November 4, 1989. Amended November 18, 1997. Amended March 12, 1998. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002. **Amended:** Filed July 22, 2005. Effective August 26, 2005.

#### **610-X-8-.04 Investigation.**

(1) Upon self-disclosure or receipt of a written complaint alleging that a registered nurse or licensed practical nurse has violated a statute or rule by committing one or more of the actions specified as grounds for disciplinary action, the Executive Officer shall provide for an investigation by Board staff to determine if there is sufficient evidence to warrant disciplinary proceedings.

(2) When an investigation discloses that disciplinary action is not warranted for the protection of the public health, safety and welfare, the investigative file shall be closed, provided that the matter may be reinvestigated at any time if circumstances so warrant.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, § 34-21-2(1), 34-21-25.

**History:** Effective September 29, 1982. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002.

#### **610-X-8-.05 Board Action Following Investigation.**

The Board or its authorized designee shall have the power to act on the report of the investigation as follows:

(1) Dismiss complaint.

(2) Send a letter of admonishment to the registered nurse or licensed practical nurse.

(3) Commence disciplinary proceedings.

(4) Accept voluntary surrender of a license.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, § 34-21-2(l), 34-21-25.

**History:** Effective September 29, 1982. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002.



#### **610-X-8-.06 Administrative Procedure Act.**

The Alabama Board of Nursing hereby adopts by reference as its rules §§ 12 through 21 of Chapter 22, Title 41, Code of Alabama, 1975, as amended, governing contested cases, appeals, and related proceedings unless inconsistent with §34-21-25 or Chapter 610-X-8.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, § 41-22-9.

**History:** Effective September 29, 1982. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002. **Amended:** Filed July 22, 2005. Effective August 26, 2005.

#### **610-X-8-.07 Formal Disposition of Contested Cases.**

(1) At least twenty days prior to the administrative hearing, a notice of hearing and a copy of the charges shall be served on the applicant, registered nurse or licensed practical nurse personally or by registered or certified mail to the last known address shown on the records of the Board.

(2) The Board's complaint may be amended prior to the hearing but no amendment shall be permitted which is not germane to the charge or charges or which materially alters the nature of any offense charged. The Board shall have the right to determine the sufficiency of the complaint.

(3) A motion for withdrawal of the complaint may be filed with the Board's designee. The circumstances surrounding the attempt to withdraw the complaint may be explained by the person who is attempting to withdraw the complaint and the explanation shall be considered. No complaint that is well-founded will be dismissed solely upon the motion of the original complainant.

(4) Pleadings relating to disciplinary proceedings pending before the Board shall be filed with the Board's designee. Pleadings shall be deemed filed upon actual receipt.

(5) Requests for subpoenas shall be filed with the Board at least ten days prior to the hearing along with the appropriate subpoena-processing fee. Any expense for service by a sheriff, process server or other entity shall be the responsibility of the party requesting the subpoena. Any expenses incurred relative to subpoenas requested by a Respondent, either for witnesses or related to production of documents are the responsibility of the party who requested the issuance of said subpoena.

(6) The hearing shall be conducted by the Board or by a hearing officer appointed by the Board. All testimony shall be under oath and shall be

transcribed by a court reporter scheduled by the Board. Telephonic or other real-time electronic testimony is admissible at the discretion of the hearing officer.

(7) A continuance may be granted by the Board or its designee upon the filing of a written motion and affidavit detailing the reasons for the continuance. No motion for continuance shall be granted unless filed at least five days prior to the hearing. This provision may be waived upon showing of an emergency.

**Author:** Alabama Board of Nursing

**Statutory Authority:** **Code of Alabama, 1975**, § 34-21-2(l)(7)(8)(16), 34-21-25, 41-22-12, 41-22-14.

**History:** Effective September 29, 1982. Amended March 24, 1984. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002.

#### **610-X-8-.08 Informal Disposition of Contested Cases.**

(1) Complaints or controversies may be considered and resolved by the Board or Board designee through alternative dispute resolution, informal conferences, meetings, or other informal means. Such shall be held without prejudice to the right of the Board thereafter to institute formal proceedings based upon the same or related material if circumstances so warrant.

(2) Informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing and as approved by the Board.

**Author:** Alabama Board of Nursing

**Statutory Authority:** **Code of Alabama, 1975**, § 34-21-2(l), 41-22-12(e).

**History:** Effective September 29, 1982. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002.

#### **610-X-8-.09 Decisions of the Board.**

(1) Based upon the evidence presented at the administrative hearing or pursuant to informal disposition the Board action may be one or more of the following:

- (a) Dismiss the complaint.
- (b) Reprimand the respondent.
- (c) Probate the respondent's license.

- (d) Suspend the respondent's license.
- (e) Revoke the respondent's license.
- (f) Deny approval of the applicant to take the licensing examination or deny approval of the applicant for licensure by endorsement.
- (g) Deny renewal or reinstatement of a license.
- (h) Impose other sanctions or restrictions.
- (2) The Board may levy a fine not to exceed \$1,000.00 per violation.
- (3) The decisions of the Board shall be in writing in the form of an Order, a copy of which shall be mailed or delivered to the respondent or the respondent's attorney.
- (4) The decisions of the Board shall be subject to public dissemination.
- (5) Appeals from decisions of the Board are to the Circuit Court of Montgomery County, Montgomery, Alabama and are to be perfected in accordance with the Administrative Procedure Act.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, § 34-21-25.

**History:** Effective September 29, 1982. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002.

#### **610-X-8-10 Application Following Denial of Licensure.**

- (1) Application for a license following denial of licensure shall:
  - (a) Include evidence of rehabilitation, or elimination or resolution of the conditions for denial.
  - (b) Be made according to Chapter 610-X-4.
- (2) Board action on applications following denial of licensure may be resolved either informally or through the formal hearing process.
- (3) In considering a subsequent application for licensure, the Board may evaluate factors that include but are not limited to:
  - (a) The severity of the act(s) or omission(s) which resulted in the denial of license.

- (b) The conduct of the applicant subsequent to the denial of license.
- (c) The lapse of time since denial of license.
- (d) Compliance with any conditions stipulated by the Board as a prerequisite for a subsequent application.
- (e) Rehabilitation attained by the applicant as evidenced by statements provided directly to the Board from qualified individuals who have professional knowledge of the applicant.
- (f) Whether the applicant is in violation of any applicable statute or rule.

**Author:** Alabama Board of Nursing

**Statutory Authority:** **Code of Alabama, 1975**, § 34-21-2(l), 34-21-25.

**History:** Effective September 29, 1982. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002.

#### **610-X-8-.11 Reinstatement of a Revoked License**

- (1) Application for reinstatement of a revoked license:
  - (a) May be made twelve months after the effective date of revocation unless otherwise specified in Order or Agreement.
  - (b) Shall be made according to guidelines and on the forms provided by the Board.
- (2) Applications for reinstatement of a revoked license may be resolved either informally or through the formal hearing process.
- (3) In considering reinstatement of a revoked license, the Board may evaluate factors that include but are not limited to:
  - (a) Severity of the act(s) that resulted in revocation of the license.
  - (b) Conduct of the applicant subsequent to the revocation of license.
  - (c) Lapse of time since revocation.
  - (d) Compliance with all reinstatement requirements stipulated by the Board.
  - (e) Rehabilitation attained by the applicant as evidenced by statements provided directly to the Board from qualified individuals who have professional knowledge of the applicant.

(f) Whether the applicant is in violation of any applicable statute or rule.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, § 34-21-2(l), 34-21-25.

**History:** Effective September 29, 1982. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002. **Amended:** Filed July 22, 2005. Effective August 26, 2005.